

1 increases," and it gets the attention of someone who
2 has practiced ergonomics and someone who has kind of
3 honed their ergonomics eye.

4 Q. Now how does that specific sentence in your
5 report relate to the facts of this case as you
6 understand them? Is there something you're implying
7 there? I'm just trying to understand why that
8 sentence sticks out to you in regard to the facts of
9 this case.

10 A. In regards to the facts of this case, I saw
11 many examples of where ergonomics was communicated and
12 implored to workers and that it would assist the
13 company if more than just safety folks or managers
14 took on the responsibility of being an everyday safety
15 inspector, which would include ergonomics; that, in
16 fact, the individual workers who are given ergonomics
17 awareness training either in person or in toolbox
18 talks or tailgate safety meetings, that individual can
19 improve their ergo eye, keep an eye for hazards, point
20 them out, and ask for interventions or assessments and
21 mitigations because of risks they would encounter.

22 When I looked at the evidence of this case,
23 that jumped out at me, that there were well-designed
24 flow racks and shelving that were being used counter
25 to their ergonomic design and counter to the

1 principles that East Penn espoused in their safety
2 memos and safety training when it comes to ergonomics
3 and utilizing the employee as an additional set of
4 eyes out there looking for hazards and correcting them
5 if they can or reporting them if they can't.

6 Q. To be clear, sir, though, you have not seen
7 all of the evidence in this case, have you?

8 A. It's hard for me to know.

9 Q. Okay. Let me just drop down a little bit in
10 your report. I'm now going to page 4 where it says,
11 "Assumptions." Do you see that?

12 A. Yes.

13 Q. That page "Assumptions" and then on to page
14 5 -- pages 4 and 5 of your report, are those all of
15 the assumptions that formed the basis for your
16 opinions reached in this case?

17 A. Restate that, please.

18 Q. Are all of the assumptions listed on pages 4
19 and 5 of your report the assumptions you used in
20 reaching the opinions that you set out in this report?
21 I want to understand the basis -- the factual basis of
22 the opinions that you've laid out in your report here.

23 A. I believe that those assumptions that you're
24 scrolling past---

25 Q. Yes. And feel free to tell me to go back,

1 up, down, whatever you'd like.

2 A. That's okay. I also have a paper copy of the
3 November report. Those assumptions listed include
4 "Plaintiff alleges the following." So those would not
5 be all of the assumptions. Those would be the
6 assumptions elaborated as what the Plaintiff alleges
7 in the evidence provided to me.

8 Q. Okay. Let me just try to make sure that I
9 understand exactly what factual basis -- because an
10 opinion, I think you would agree, is only as good as
11 the facts that it's based upon. Would you agree to
12 that general principle?

13 A. Generally, yes.

14 Q. So if you don't have the full facts or you
15 have incorrect facts, that's going to influence the
16 opinions that you're giving in any particular
17 situation; is that fair to say?

18 A. I think so, yes.

19 Q. So if some of the facts that are listed in
20 the "Assumptions" section of your report are
21 inaccurate or are different than what is set forth
22 there, that could potentially impact your opinion; is
23 that fair to say?

24 A. Say that one, one more time, please.

25 Q. Sure. If the true facts of the case or there

1 are additional facts that are not listed in your
2 assumptions and you didn't take them into account,
3 that could impact the opinions you reached in regard
4 to this matter; is that fair to say?

5 A. I might agree with the first part of that,
6 but not the part about assumptions and things that I
7 considered. This list of assumptions does not list
8 everything. It's not---

9 Q. Then, I'd like to know what else you
10 considered besides these assumptions, other than just
11 simple, you know, general things that you are
12 propounded to be an expert upon, matters of
13 ergonomics, good practices, and things of that nature.
14 But the underlying facts, I would like -- I want to
15 understand all of the underlying facts that you relied
16 upon in forming the opinions in this case. Do you
17 understand the question I'm asking?

18 A. Right. So if you're saying excluding my
19 professional experience, education, and so on---

20 Q. That's correct.

21 A. ---then I believe I would agree with you that
22 the assumptions -- those are the assumptions.

23 Q. Got you. And so my next point was that if
24 some of the assumptions that you have recognized in
25 your report and used as the basis for the formation of

1 your opinions, if those assumptions are different or
2 contrary to some of the facts that you've relied upon
3 in forming your opinions, would it be fair to say that
4 could affect the opinions that you ultimately reach
5 with regard to this case?

6 A. Yes.

7 Q. Okay. So that's that section. Was there
8 anything--- I just want to jump back because I want
9 to understand kind of the overall substance of your
10 report.

11 Was there anything else that was sticking out
12 to you in the "Ergonomics and the Ergonomics Process"
13 section of your report beginning on page 2 that
14 relates directly to this case? I'm sorry.

15 THE WITNESS: I have a dry mouth and
16 need to use the restroom, so I would like to
17 request we take a break.

18 MR. FINAN: Yeah. Can you just answer
19 that one question, and then I'm happy to do
20 that for you.

21 A. I would need to very quickly look at my
22 "Ergonomics and the Ergonomics Process" and tell you
23 if there were things in here that jumped out at me. I
24 don't have them top of mind at this point.

25 Q. Got you. I guess my more general question

1 Eastern?

2 MR. FINAN: That's fine.

3 THE WITNESS: Thank you.

4 (A brief recess was taken from 1:56 p.m.
5 to 2:06 p.m.)

6 MR. FINAN: All right. We're back on
7 the record.

8 Q. (By Mr. Finan) Mr. Gondzur, I'm going to
9 share my screen again here. Are you able to see my
10 screen now?

11 A. Yes.

12 Q. Okay. And what I've done is, I've gone to
13 the sixth page of your 14-page report. Do you see
14 that?

15 A. Yes.

16 Q. And there's a section that's entitled,
17 "Professional Opinions and Basis for these Opinions."
18 Do you see that?

19 A. Yes.

20 Q. It reads, "In my professional opinion, the
21 subject workplace, and work therein, were unsafe and
22 unreasonably dangerous as designed for one or more of
23 the following reasons." I want to understand all of
24 the opinions that you hold in this case.

25 Is your opinion in this case stated in the

1 highlighted text?

2 A. Yes.

3 Q. Okay. Are there any other opinions besides
4 the highlighted section that I just read into the
5 record that would dictate any other opinions that you
6 hold in regard to this case?

7 A. No.

8 Q. Okay. So that is the singular opinion that
9 you have reached in regard to this case, is that
10 correct?

11 A. Yes.

12 Q. Okay. When you reference "the subject
13 workplace," where are you referring to?

14 A. The sites including the home base and the
15 field locations, customer sites, the vehicle itself
16 that the route driver would drive, anything that would
17 be considered a workplace in the course and scope of
18 Mr. Dorvit's work -- the Plaintiff's work.

19 Q. So you considered every one of his over 200
20 customers as part of your report; is that what you're
21 saying?

22 A. I'm saying a sampling of them.

23 Q. Okay. Did you consider the Atlantic Coast
24 ToyotaLift site? Do you know what I mean what I say
25 that?

1 A. Yes, sir.

2 Q. Okay. Are there any other sites that you
3 specifically considered in reaching your opinion in
4 this case?

5 A. There are additional sites, a UPS site.

6 Q. The way I understand your report, your
7 opinion is what we've just read into the record, and
8 it's -- the reasons that support it are listed here in
9 numbers 1, 2, 3, 3.1, 3.2, 4, 5, and 6, correct?

10 A. Yes.

11 Q. Do those six bullet points and two sub-bullet
12 points represent the full basis for the opinions that
13 you've reached in this case set out in your report?

14 A. Yes.

15 Q. Are there any of the items that are listed in
16 1 through 6, inclusive, that reference any particular
17 task performed by Mr. Dorvit at the UPS site?

18 A. That list--- I'm sorry. Would you rephrase
19 that?

20 Q. Sure. In those numbers 1 through 6,
21 inclusive, are there any of the items that are listed
22 there that would reference your evaluation of a
23 particular condition that would have existed at the
24 UPS site?

25 A. Do you mean exclusively and only at the UPS

1 site---

2 Q. Yes, exclusively that relate specifically to
3 the UPS site.

4 A. No.

5 Q. Are there any that are listed that relate
6 specifically to the Atlantic Coast ToyotaLift site?

7 A. I think I'm confused by your questioning.

8 Q. Sure. I'm just trying to figure out --
9 because they're all very general statements other than
10 what appears under numbers -- item numbers 3, 3.1, and
11 3.2. Do you see those items there?

12 A. Uh-huh.

13 Q. And with regard to the condition that you
14 found to be, quote, "unsafe and unreasonably
15 dangerous," I'm trying to understand exactly what
16 facility you are pointing to as the basis for your
17 opinion.

18 And the only one I see here that's listed
19 appears to match up with the shelving unit at Atlantic
20 Coast ToyotaLift; is that fair to say?

21 A. Yes, that's fair to say.

22 Q. Okay. So you didn't specifically include or
23 review any of the other details of any other site
24 besides Atlantic Coast ToyotaLift in forming your
25 opinion that there was an unsafe and unreasonably

1 dangerous condition, is that correct?

2 A. Not in this report, that's correct.

3 Q. Okay. And then in terms of -- I'm going to
4 just run through the whole thing. You've listed
5 information considered in formulating the above --
6 this opinion.

7 Is that a complete listing of the items and
8 documents that you considered in formulating your
9 opinions?

10 A. Yes.

11 Q. Did you prepare this report yourself or did
12 somebody prepare it for you on your behalf?

13 A. I prepared it myself.

14 Q. Have you prepared any other expert reports
15 prior to this one in your service as an expert
16 witness?

17 A. Yes, I have.

18 Q. Okay. And, then, you are being paid for your
19 services, correct?

20 A. Yes.

21 Q. And is the rate of 150 per hour an accurate
22 identification of your compensation per hour in this
23 matter?

24 A. For the file review component, yes, not for
25 the deposition.

1 Q. Okay. And have you been asked to perform
2 additional services beyond the initial file review
3 that would result in you charging more than \$3000 for
4 your testimony in this case?

5 A. I would have to look at my billable hours
6 spreadsheet to answer that.

7 Q. Okay. I want to go back up---

8 A. I can tell you that \$3000 was -- that number
9 is the retainer. That wasn't a line item invoice type
10 of approach.

11 Q. Got you. And have you expended the full
12 amount of that retainer as of today?

13 A. Again, I would have to look at my spreadsheet
14 to know that.

15 Q. Sure. I'm going back to the first page of
16 your report, and I want to -- we've now narrowed down
17 that you have one opinion in this case, that the work
18 site was purportedly unsafe and unreasonably dangerous
19 and that your analysis of the basis for that focused
20 on Atlantic Coast ToyotaLift's location.

21 I want to get back to this sentence again
22 here. Are you also aware that Mr. Dorvit ultimately
23 refused to perform a task that led to his termination?

24 A. Yes.

25 Q. Do you know what the specific task was that

1 Mr. Dorvit was asked to perform that he refused to do?

2 A. It involved the delivery of batteries at the
3 facility.

4 Q. The Atlantic Coast ToyotaLift facility?

5 A. Yes.

6 Q. Sorry. Was that a yes? It kind of cut out.

7 A. Yes, sir.

8 Q. Okay. And so it's your understanding that he
9 was terminated as a result of his refusal to rack
10 batteries on the shelves at Atlantic Coast ToyotaLift;
11 is that fair to say?

12 A. If I recall correctly reading the documentary
13 evidence and previous depositions, there may have been
14 extenuating circumstances beyond just that, but I
15 believe that the major focus was his refusal to
16 perform that work task that he believed was unsafe.

17 Q. Okay. In your analysis of the situation that
18 led you to form the opinion that you hold and have
19 expressed in this report, do you know the specifics of
20 the circumstances that relate to which shelf
21 Mr. Dorvit refused to rack batteries on?

22 A. I understand it was the second from the
23 bottom.

24 Q. Okay. Now where in your assumptions is that
25 recited? Because in looking through your statement of

1 assumptions--- Do you see where I've highlighted on
2 page 4?

3 A. Yes.

4 Q. Okay. Is there something else in the report
5 that would indicate that you analyzed and that your
6 opinion is based upon his refusal to rack batteries on
7 the second shelf up from the floor rather than the
8 bottom shelf just above floor level?

9 A. I don't believe there's anything else in my
10 report that references that.

11 Q. Okay. And, again, going to the basis for
12 your opinion, do items number 3.1 and 3.2 only relate
13 to Mr. Dorvit's purportedly having to place batteries
14 on the very bottommost shelf?

15 A. They are focused on the bottommost shelf;
16 this is true.

17 Q. And it says right here, "Loading a rack at
18 floor level"?

19 A. Yes.

20 Q. It's fair to state, then, that in numbers 3,
21 3.1, and 3.2, those bases for your opinion focus
22 exclusively on the rack at the floor level, correct?

23 A. I'm sorry. Say that one more time.

24 Q. Sure. It's fair to say, then, that the --
25 what you list in numbers 3, 3.1, and 3.2 are focused

1 exclusively -- this is on page 6 of your report -- are
2 focused exclusively on the racking of batteries at the
3 very bottom level of the shelving system; is that fair
4 to say?

5 A. I don't know if I'd use the word
6 "exclusively," but certainly, the emphasis there was
7 on that---

8 Q. Well, it states right here -- it says,
9 "Loading a rack at floor level from the front with
10 heavy batteries significantly increases the risk of
11 musculoskeletal disorder due to a combining of risk
12 factors as described below"?

13 A. Sure.

14 Q. Is there any discussion of the second shelf
15 at all in that paragraph 3?

16 A. There is not.

17 Q. In numbers 1 through 6, is there any
18 discussion of the second shelf at all anywhere?

19 A. No.

20 Q. Okay. So is it fair to say that in reaching
21 the opinion that you reached in this case that there
22 was an unsafe and unreasonably dangerous condition,
23 you focused exclusively on the shelf at the floor
24 level, correct?

25 A. What was the beginning of that sentence? Is

1 there any what?

2 Q. In reaching the opinion that you've reached
3 that there was an unsafe and unreasonably dangerous
4 workplace condition, you focused your analysis only on
5 the racking at the very floor level at Atlantic Coast
6 ToyotaLift, correct?

7 A. No. I was looking at evidence regarding the
8 entire rack and the practice of being asked to load a
9 first in, first out rack from the front. It wasn't
10 just the bottom shelf. It's just that the bottom
11 shelf was called out specifically in the assumptions
12 and then called out in this report, but the items 1
13 and 2, for instance, are not exclusively to the bottom
14 shelf.

15 Q. Okay. Do they state anything at all about
16 the bottom shelf? They don't appear to, to me. You
17 tell me.

18 A. Items 1 and 2, right, they do not -- they do
19 not call out shelf height.

20 Q. Right. And they seem to me to be more, I
21 would call them, general statements rather than
22 statements that are specific to the facts of this
23 case, correct?

24 A. No, I wouldn't say that. Those facts have to
25 do with the entire shelving system, and the risk to an

1 individual pushing batteries up a slope is not a risk
2 I would reconsider at certain heights. We're also
3 looking at the forces involved as batteries are in
4 series in a column on a shelf at any height.

5 Q. To be clear, you did not perform any personal
6 analysis or calculation of any kind with respect to
7 any force that would be required to move any of the
8 batteries on either the bottommost shelf or the second
9 shelf up from the floor in this case, did you?

10 A. That's correct.

11 Q. You have not performed any such calculation
12 at all, have you?

13 A. No quantitative analysis has been performed
14 by me.

15 Q. Okay. And you didn't personally visit and
16 inspect the location to reach the conclusions that
17 you've reached and the opinion that you've included in
18 your report in this case, did you? I'm sorry?

19 A. Would you say that one more time, please.

20 Q. You didn't personally visit and inspect the
21 location in connection with your reaching the
22 conclusions and providing the opinion that you've
23 provided in this case, did you?

24 A. I did not personally inspect the site. I
25 formed my opinion based on looking at the documentary

1 evidence, the photos because this was, in my opinion,
2 an obvious set of circumstances, that the hazards were
3 obvious and could be such that a quantitative analysis
4 could be replaced with a qualitative one, where you're
5 not looking at degrees of hazard but rather hazard in
6 a greater -- more big picture concept.

7 Q. Okay. So in terms of the second shelf again,
8 I want to understand exactly what portions of these
9 items numbered 1 through 6 on your report relate in
10 any way to your opinion with respect to the placement
11 and loading of batteries on the second shelf of the
12 rack.

13 Again, I think we've established that 3 and
14 its subparts relate only to the floor-level rack,
15 correct?

16 MR. VAN KAMPEN: Objection.

17 Mischaracterizes his testimony.

18 Q. You can answer.

19 THE WITNESS: I answer?

20 MR. VAN KAMPEN: Yeah. I objected and
21 said it mischaracterizes the testimony. You
22 can answer.

23 A. I would not say point 3 is exclusive,
24 although it mentions the rack at floor level. The
25 forceful exertions of pushing and pulling batteries

1 exist at any level on a racking system like this, and
2 certainly points 1, 2, 4, 5, and 6 are in relation to
3 the entire shelving system, each rack level.

4 Q. Again, tell me -- I think 3, as I'm reading
5 it, relates specifically to the floor-level rack. It
6 says, "Loading a rack at floor level," at the very
7 beginning and then describes under 3.1 and 3.2 the
8 things that relate to that rack.

9 Tell me where in points 1, 2, 4, 5, or 6
10 there is anything that relates to the middle -- second
11 shelf rack?

12 A. Points 1, 2, 4, 5, and 6 imply the entire
13 racking system. They don't call out a specific rack.

14 Q. Okay. You make a statement here, "Several
15 weeks after Mr. Dorvit's termination---" This is
16 under point 5. ---"ACTL relocated the rack away from
17 the back wall allowing to safely load from the rear,
18 including ACTL likely recognized the hazard of its
19 original position."

20 You don't have any basis to make that
21 statement, do you, in terms of your own knowledge why
22 Atlantic Coast moved the shelf or if it even did?

23 A. My basis would be my professional experience
24 in servicing and interacting with employers, observing
25 safe behaviors and unsafe behaviors, and the

1 consequences of highlighting hazards and mitigating
2 them. Oftentimes after an accident, you'll see a
3 reaction where adjustments are made.

4 You might even see a reaction when an
5 employer has a supervisor walk into an area. People
6 begin to put on their safety glasses. We call that an
7 adjustment because they know the right thing to do,
8 the safe thing to do, and they may not always do it
9 when no one's looking, but when an event occurs,
10 sometimes you'll see that adjustment activity
11 occurring.

12 I would say that I perceive this declaration
13 of them relocating as an adjustment-type behavior,
14 recognizing that it was an unnecessarily hazardous
15 position for a FIFO rack to have it against a wall
16 when it needs to be loaded from the rear. They
17 recognized that and they likely took action based on
18 that recognition of this hazard.

19 Q. And just to be clear, sir, that's pure
20 conjecture on your part. You have no basis in fact
21 for knowing why Atlantic Coast actually moved the rack
22 from its original position, do you?

23 A. That's correct.

24 Q. How does risk--- Strike that.

25 How does any history of safety or injury---

1 Q. Okay. How do those -- again, going back to
2 my actual question, with respect to 3.2 -- and I'll
3 just read it, "Forceful exertions of pushing a series
4 of two or more batteries weighing from 30 to 50
5 pounds, up an approximate 15 to 20 degree slope,
6 against the force of gravity, with shoulder exertion
7 while in an extremely awkward posture kneeling on a
8 hard surface while experiencing contact pressure or
9 contact stress from the floor, shelf, and shelf edge."

10 Tell me what you're -- what are you saying
11 there? I want to understand that paragraph.

12 A. Sure. Okay. That's shoulder extension, not
13 shoulder exertion, by the way.

14 Q. I'm sorry.

15 A. That's okay. So what I'm saying there is
16 that, as I stated, when analyzing a job with ergonomic
17 risk factors, when we measure the hazard and
18 approximate the risk, there are a number of inputs
19 that can affect the output, outcome, and the risk.

20 So you've got force, you've got additions to
21 force because of slope and gravity and the inherent
22 friction, and then we have the awkward posture of the
23 reach required, the extension of the shoulder. If you
24 couple those with the risk factor of kneeling on a
25 hard surface, the contact pressure or stress from that

1 kneeling as well as the contact pressure or stress
2 from the shelf and the shelf edge, that combination
3 typically results in higher hazard and higher risk.

4 Q. That's what you're saying in 3.2?

5 A. Yes.

6 Q. Okay. And was an assumption that you've made
7 in reaching that basis for your opinion under 3.2 that
8 the slope of the shelving was at a 15 to 20 degree
9 angle?

10 A. Yes.

11 Q. How does that impact your analysis?

12 A. It adds an additional factor to any proposed
13 future calculation of force and hazard.

14 Q. Just to be clear, that's not a calculation
15 you've ever performed, correct?

16 A. Not at this ACTL site.

17 Q. Okay. That's correct. You've performed them
18 in the past, but you've not performed them with regard
19 to this case, correct?

20 A. That's correct.

21 Q. Okay. How would your opinion differ if it
22 were the case that the slope were actually far less
23 than 15 to 20 degrees?

24 A. Are you saying quantify that?

25 Q. You've not done any quantitative analysis,

1 and you've, I think, used the term that all of this
2 was based upon qualitative analysis and some
3 assumptions that you made. One of those assumptions
4 appears to be that you're dealing with a 15 to 20
5 degree slope.

6 If that slope were less than that by a
7 significant amount, how would that change your
8 conclusions?

9 A. It would depend on how much different it is,
10 you know, how much less than that assumed or presumed
11 15 to 20 degrees.

12 Q. How much less would be relevant in your mind?

13 A. Probably 50 to 60 or so percent less would
14 have an impact. It wouldn't change the hazard
15 completely, but it would probably lessen the hazard.
16 It's hard to know without, you know, doing a
17 quantitative analysis.

18 Q. And, again, you're right. It is difficult
19 and you did not perform one here, so I'm just trying
20 to understand the basis and the reasons why you
21 reached the conclusions that you did reach. And if
22 there's assumptions that you've made that were
23 different than what is actually out there in the
24 field, I'm trying to learn and understand how those
25 might impact your opinions. Do you see what I'm

1 getting at there?

2 A. Right.

3 Q. Okay. Let me show you a picture. This is
4 going to be Exhibit 82, and this has been produced
5 today. This was a picture that was taken from the
6 site of the actual slope of the shelf. It's not a
7 precision instrument, but this is an iPhone on the
8 shelf itself indicating that it's a five percent slope
9 rather than a 15 to 20 percent slope. Do you see what
10 I'm showing you there?

11 (Deposition Exhibit Number 82 was marked
12 for identification.)

13 MR. VAN KAMPEN: Chris, let me just
14 object for the record and point out that this
15 photo was taken at an inspection on land
16 occurring, I think, a year or more after the
17 actual incident on a shelf that was not in
18 the same location as the previous shelf.

19 So we're not conceding or stipulating
20 that this is the same shelf or that the shelf
21 wasn't manipulated or changed in the interim
22 period.

23 MR. FINAN: And that's fine and feel
24 free to place your objection on the record,
25 and I'll just point you to the testimony of

1 Atlantic Coast that says this is the exact
2 same shelf, configured in the exact same way
3 that it was at the time in question. It is
4 just at a different location.

5 Q. So with that on the record, Mr. Gondzur, it
6 appears -- I think you said that a 50 to 60 percent
7 difference would have an impact on your opinion. This
8 is somewhere between a 75 percent difference at its
9 highest from the assumption at 20 percent that you
10 made in reaching the opinions that you did.

11 So how would -- if the shelving slope were
12 actually only five percent, how would that change your
13 opinions in this case?

14 A. What it would do, if it were true, it would
15 lessen the slope component, but it wouldn't have any
16 impact on the friction component. What we don't know
17 from pure slope is a measurement of the -- like the
18 coefficient of drag. So slope is one component, but
19 it doesn't tell the whole story.

20 Even if that said, you know, a 30-degree
21 slope or a zero-degree slope, that's one component.
22 What we're after is what's the force requirement, and
23 that's the component we don't have.

24 Q. Okay. But, again, you've reached an opinion
25 in this case that the task was unsafe and unreasonably

1 dangerous and you based it, at least in part, upon a
2 shelf that we would contend is actually five degrees
3 in slope versus your report which says 15 to 20
4 degrees in slope.

5 You also indicate friction is a
6 consideration, is that correct?

7 A. Right. As a complement to gravity, we see
8 that friction has play in terms of force requirements
9 when pushing and pulling objects.

10 Q. Okay. So, obviously, the more force that is
11 required to move an object, the more potentially
12 unsafe or dangerous it could be; is that a fair
13 statement of a general proposition?

14 A. Yes.

15 Q. Okay. So if something is relatively easy to
16 move, does that indicate a condition where there is
17 less danger present?

18 A. It might.

19 Q. Okay. I'm going to show you a video--- I'm
20 going to show you a video of batteries being moved on
21 the rack and then ask to get your reaction to it.

22 (Video played.)

23 MR. VAN KAMPEN: Chris, are you playing
24 this at a slow speed?

25 MR. FINAN: No.

1 MR. VAN KAMPEN: Because it's -- yeah,
2 it's just looking slow to me. Okay.

3 MR. FINAN: I'll play it again. It
4 might just be an Internet connection lag or
5 something like that.

6 MR. VAN KAMPEN: Uh-huh.

7 MR. FINAN: Let me play it again.

8 **(Video played.)**

9 MR. VAN KAMPEN: Let me just get an
10 objection on the record. First, can you,
11 Chris, just identify for the witness whose
12 voice it is representing that this is the
13 same rack? Is that an East Penn employee?

14 MR. FINAN: No. That is the owner of
15 Atlantic Coast ToyotaLift.

16 MR. VAN KAMPEN: All right.

17 MR. FINAN: He was the deponent in the
18 case.

19 MR. VAN KAMPEN: Let me just state --
20 object for the record that the batteries in
21 question are Interstate batteries that are
22 being moved, and we further object to the
23 fact that we don't know the chain of custody
24 around those batteries, whether or not those
25 batteries have their cores in them, how much

1 materials. At the time of writing this report, I had
2 no similar documentary evidence about the particular
3 shelf in question or the racking system in question.
4 But with an average slope of 15 degrees, I believe
5 what they are implying here is that slopes can be
6 sold -- or shelving units can be sold with different
7 slopes.

8 Q. Understood. And what we've shown you here,
9 though -- unless you have any evidence or reason to
10 contest it -- is that the slope of this particular
11 rack was five degrees, correct?

12 A. I do not know the slope of the rack in
13 question.

14 Q. Okay. What I stated and showed you was a
15 picture of a five-degree measurement taken at the date
16 of the inspection, do you any reason to believe that
17 that's inaccurate based on what you've seen?

18 A. I have reason to believe that it's not
19 reliable based on the fact that it was an image on a
20 smart phone, not any evidence of a NIST traceable
21 scientific instrument.

22 Q. That wasn't my question. My question was,
23 you don't have any evidence to indicate that the
24 actual slope was 15 or five, do you?

25 A. That's correct.

1 Q. Okay. But in considering and in forming your
2 opinion, you considered a shelving system that had a
3 15-degree average slope -- 15 to 20, I think, was your
4 terminology, correct?

5 A. Approximately.

6 Q. Okay. In returning to the -- I want to play
7 the video again once more.

8 (Video played.)

9 Q. I want to stop the video there. Friction was
10 another component that you indicated previously was an
11 important factor in determining the force required to
12 perform a particular task, is that correct?

13 A. Yes.

14 Q. In this case, does it make a difference in
15 your analysis that when the battery's moved -- and
16 assuming they've not been manipulated in any way --
17 that they stay in place on the shelves and do not
18 slide back forward towards the front of the shelving
19 unit, despite the slope of the racking system? Does
20 that play into your analysis at all?

21 MR. VAN KAMPEN: Objection. I just want
22 to state for the record you mentioned
23 friction from the surface, and once again, we
24 don't know whether or not that's the actual
25 surface, whether that surface was manipulated

1 with some sort of lubricant to make these
2 batteries move more easily.

3 With that, you can answer the question,
4 if you know.

5 A. Yeah. I would ask you to restate that,
6 please.

7 Q. Sure. And I think with respect to the
8 objection, just for the record, I think it might make
9 it harder.

10 Is your understanding that if these batteries
11 are required to be manipulated around on the shelves,
12 the fact that they stay put and don't slide forward to
13 the front -- is that a good thing or a bad thing?

14 A. The fact that they stay put and don't slide
15 to the front, is that a good thing or a bad thing?
16 With a rack designed for very heavy items, the slope
17 involved is typically one that lessens the force
18 requirement, although it typically is not a sufficient
19 slope that would allow things to move on their own
20 without you inputting some pressure, if you understand
21 what I mean.

22 Q. I think I do.

23 A. This type of a slope -- it assists the worker
24 in manipulating things, but it's not exactly like the
25 slope you might see in, say, a grocery store where you

1 take one item and everything comes sliding down right
2 behind it before you can even get your item off the
3 shelf.

4 Q. The soup can dispenser?

5 A. Right. This design typically is -- the slope
6 is a little more gradual, and in fact, it's really
7 more about helping the delivery person than it is the
8 customer who might be removing the battery from the
9 rack.

10 Q. Now when you---

11 A. I'm sorry. I'm lost in my -- in answering
12 your question, I lost myself in remembering exactly
13 what your question was.

14 Q. That's okay. I understand. What I'm trying
15 to understand is, if you're not able to load this
16 rack, for whatever reason, from the rear -- and, you
17 know, obviously, we don't concede that it's supposed
18 to be loaded from the rear.

19 But if it were and the batteries, rather than
20 you having to hold them up in place -- like the soup
21 can dispenser, you'd have to hold everything in place
22 to put the one in the front because they'd all come
23 sliding down at you if you didn't -- is it a benefit
24 to the person who's racking the batteries on the
25 shelf, assuming there's enough room around them to

1 manipulate them, that the batteries stay put on the
2 shelves by themselves and don't come sliding back to
3 the front while trying to load the batteries on the
4 shelf?

5 A. Yes.

6 Q. That would reduce the risk of the unsafe
7 condition, then, correct?

8 A. You'd have to be more specific when you say
9 "that would reduce the risk." The risk to whom and
10 from what?

11 Q. Well, I mean, again, I'm focused on your
12 opinions in the case, and your opinion is that this
13 racking system is unsafe and -- unsafe and
14 unreasonably dangerous.

15 A. Uh-huh.

16 Q. And so the fact that the batteries do not
17 move around on the shelf on their own makes the
18 condition less unsafe and less unreasonably dangerous;
19 is that fair to say?

20 A. I don't know.

21 Q. Okay. It's hard to determine without
22 performing a full quantitative analysis, correct?

23 A. It's hard to determine the push-pull
24 component. However, if you would note, in my report
25 on page 4, again, I believe -- no, not 4 -- page 6,

1 we're also talking about pulling batteries, and that
2 pulling of batteries to exchange batteries, to remove
3 junk, or to add new batteries, that has a lifting
4 component to it, and the slope of the shelf has no
5 impact on the lifting component. The lip on the rack
6 would have an impact, and there would be no such lip
7 on the rear of the rack.

8 Q. But you would, on the rear of the rack, have
9 a longer distance to lift, would you not?

10 A. A longer distance to lift?

11 Q. You have to lift it higher up?

12 A. Right. So that would be an additional---

13 Q. That would be additional force required to
14 lift the battery higher, correct?

15 A. Presumably there would be a slightly higher
16 force.

17 Q. I want to just show you -- this is
18 Plaintiff's Exhibit -- well, it's Exhibit 75. You can
19 see from these photographs, this is sort of the back.
20 Do you see that photo? This is Plaintiff's -- I think
21 it's 542 Bates-numbered, and you see this is the back
22 of that bottom shelf, just for an example?

23 A. Uh-huh.

24 Q. It's about -- it's hard to tell because it's
25 at a little bit of an angle, but somewhere between